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Attorneys for Plaintiff Public First Law Center

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

DEFENDER COUNCIL; JON N.
IKENAGA; and AGRIBUSINESS
DEVELOPMENT CORPORATION
BOARD OF DIRECTORS,

Defendants.

CIVIL NO. _____
(Other Civil Action)

COMPLAINT; SUMMONS

JUDGE: NONE

TRIAL DATE: NONE

COMPLAINT

Plaintiff Public First Law Center (Public First) alleges as follows:

PARTIES

1. Public First is a Hawai`i nonprofit organization dedicated to promoting government transparency.
2. Defendant Defender Council (Council) is an agency, board, commission, authority, or committee of the State of Hawai`i within the definition of "Board" under



Hawai`i Revised Statutes (HRS) § 92-2, headquartered at 1130 North Nimitz Highway, Suite A-254, Honolulu, Hawai`i 96817.

3. Defendant Jon N. Ikenaga was appointed State Public Defender by the Council on November 2, 2023, for a term of four years, commencing January 2024. Pursuant to *Civil Beat Law Center for the Public Interest v. City & County of Honolulu*, 144 Hawai`i 466, 445 P.3d 47 (2019), Defendant Ikenaga is made a party to this action because the requested relief includes a request to void his selection as State Public Defender based solely on the Council's numerous violations of the Sunshine Law during the selection process.

4. Defendant Agribusiness Development Corporation Board of Directors (ADC Board) is an agency, board, commission, authority, or committee of the State of Hawai`i within the definition of "Board" under HRS § 92-2, headquartered at 235 S. Beretania Street, Room 205, Honolulu, Hawai`i 96813.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action to enforce the provisions of the Sunshine Law, HRS chapter 92, by injunction or other appropriate remedy pursuant to HRS §§ 92-12(b) and 603-21.5(3).

6. Venue is proper in this Court pursuant to HRS §§ 92-12(c) and 603-36(5) for any one of the following: the prohibited act occurred in this circuit; the claim for relief arose in this circuit; and the Defendants are domiciled in this circuit.

FACTUAL BACKGROUND

7. The Sunshine Law exists to provide the people of Hawai`i the opportunity to observe and participate meaningfully in government processes and to promote trust in government.

8. The Sunshine Law provides that every meeting of every board “shall” be open to the public and that the deliberations, decisions, and actions of these boards “shall” be conducted as openly as possible, subject to narrowly construed exceptions. HRS §§ 92-1, -3, -4, and -5.

9. Among other concerns, the Council and ADC Board recently hired two high-level government employees – the State Public Defender and the Executive Director of the Agribusiness Development Corporation (ADC) – after holding a series of improper closed-door meetings.

10. These actions violate the Sunshine Law and erode public trust in government.

11. Future violations of this sort will continue, unabated, absent judicial intervention.

12. This suit seeks declaratory and injunctive relief to help prevent future violations, afford the public proper access to board meetings, and build trust in government.

* * *

A. Council Appoints Ikenaga as State Public Defender in a Process Riddled with Months of Sunshine Law Violations

13. The Council oversees the Office of the Public Defender (OPD) and appoints the State Public Defender pursuant to HRS §§ 802-9 and -11.

14. OPD is tasked with providing constitutionally-required indigent criminal legal defense in all State courts in Hawai'i and employs more than 130 individuals, most of whom are attorneys.

15. The State Public Defender serves a term of four years and has a salary set by statute, HRS § 802-11.

16. The State Public Defender is a high-ranking government official.

17. The State Public Defender has a high level of fiscal discretion.

18. Selection of the State Public Defender is an important government process and a critical responsibility of the Council.

19. The public has a legitimate interest in observing and participating in the Council's selection of the State Public Defender.

20. The public has a legitimate interest in understanding how the Council carries out its statutory duties of appointment and oversight, including how it interviews, evaluates, and selects candidates for State Public Defender.

21. The Council held four meetings related to its selection of the State Public Defender: June 16, August 4, October 4, and November 2, 2023.

22. In violation of the Sunshine Law, the Council met *in executive session* to set the process for selecting the next State Public Defender, interview candidates, evaluate

candidate qualifications, assess candidates' respective visions for OPD, and deliberate on who would be the next State Public Defender.

23. Nothing in the Sunshine Law allows the Council to close the door, as it did, on the *entire* selection process for the State Public Defender.

June 16: Council's Unagendized and Improper Executive Session to Create a Selection Process for the State Public Defender Without Public Input

24. The Council's published June 16 agenda did not identify, as an item to be discussed at the meeting, the selection process for the next State Public Defender.

25. On June 16, however, the Council moved into executive session to discuss an unspecified agenda item.

26. On information and belief, the Council discussed and deliberated on the selection process for the next State Public Defender during the June 16 executive session.

27. When the Council reconvened in open session, it amended the June 16 agenda to "add the following discussion: selection process to appoint and hire Public Defender position."

28. After amending the agenda, the Council approved a detailed selection process, specifying deadlines and creating a working group, without any deliberation or opportunity for public comment.

29. The Council failed to publish the minutes of the June 16 meeting on or before July 26.

August 4: Council's Improper Executive Session to Amend the Selection Process for the State Public Defender

30. The Council's published August 4 agenda provided that it would convene in executive session "to consult with the Council's attorney" pursuant to HRS § 92-5(a)(4) about "personnel complaints" and the "selection process for the Public Defender."

31. On August 4, the Council moved into executive session to discuss an unspecified agenda topic.

32. The Council deliberated on the selection process for the State Public Defender during the executive session, but did not consult an attorney on the topic.

33. When it reconvened in open session, the Council announced an amended selection process.

34. The Council announced: "The list of candidates will be made public. The public will be able to submit comments on the candidates; comments will be confidential."

35. On or about September 13, the Council publicly identified the candidates for State Public Defender.

36. The Council subsequently received roughly ninety comments on the candidates.

37. The Council failed to publish the minutes of the August 4 meeting on or before September 13.

October 4: Council's Improper Executive Session to Interview Candidates and Failure to Properly Record the Proceedings

38. The published agenda for the October 4 meeting stated that the Council would interview candidates in executive session.

39. On information and belief, the Council did not hold a public session before or after convening an executive session to interview the candidates.

40. On information and belief, the Council did not provide the public an opportunity to comment on the agenda items at the October 4 meeting.

41. On information and belief, the Council did not vote to enter an executive session at the October 4 meeting.

42. On information and belief, the Council did not report to the public on the discussions that occurred in executive session at the October 4 meeting.

43. On information and belief, the Council did not vote to adjourn any public session at the October 4 meeting.

44. On information and belief, the Council did not deliberate, announce, or do anything publicly at the October 4 meeting.

45. As of the date of this filing, the Council has not publicly posted regular session minutes for the October 4 meeting.

46. The October 4 executive session minutes are cryptic and generalized and do not truly reflect the matters discussed or the views of the participants.

47. For the Council's forty-minute discussion after the candidate interviews, the October 4 executive session minutes only provide: "Discussion regarding candidates held."

November 2: Council's Improper Executive Session to Select the State Public Defender and Failure to Properly Record the Proceedings

48. The published November 2 agenda provided that the Council would discuss and possibly select the new State Public Defender in executive session.

49. On October 24, Public First notified the Council that the Sunshine Law required the Council to conduct its selection of the next State Public Defender openly and, at minimum, prohibited the Council from conducting the entire selection process in executive session.

50. Public First also notified the Council that it was delinquent in posting minutes for numerous meetings; no minutes for any Council meeting were publicly available at that time.

51. On October 25, the Council responded, through counsel: "We agree that the position of the Public Defender is a high-level position, but given the nature of the applicants (three of the four candidates are currently members of the Office of the Public Defender) and their backgrounds, we believe that it would be appropriate to hold the selection discussions in an executive session."

52. On October 26, Public First again urged the Council to reconsider its decision to deliberate entirely in secret and notified the applicants that the Council's selection process did not comply with the Sunshine Law.

53. On November 2, Public First testified before the Council and once again notified the Council that the Sunshine Law required their discussion and selection of the State Public Defender to be conducted openly.

54. The Council closed its doors anyway.

55. The Council deliberated on the selection of the State Public Defender entirely in executive session.

56. The Council selected Defendant Ikenaga as State Public Defender.

57. When it announced its decision, the Council did not discuss the candidates or the reasons for selection; the Chair simply asked for a vote, and the members voted to select Defendant Ikenaga.

58. The November 2 executive session minutes are cryptic and generalized and do not truly reflect the matters discussed or the views of the participants.

59. On November 15, the Council disclosed to Public First the public comments on the candidates, the candidates' application materials, and the Council's candidate scoring sheets.

60. The Council's selection of Defendant Ikenaga is timely challenged here pursuant to HRS § 92-11.

* * *

B. ADC Board Evaluates Former Executive Director Nakatani and Appoints a New Executive Director in Secret Processes that Violated the Sunshine Law

61. ADC manages and controls thousands of acres of agricultural State land and has the power to acquire land and agricultural infrastructure.

62. ADC has received substantial amounts of taxpayer funds over the course of its thirty-year existence.

63. Between 2013 and 2018, for example, the State Legislature appropriated more than a quarter of a billion dollars to ADC, including about \$23.4 million for operations and another \$238 million for capital investments.

64. The ADC Board appoints ADC's Executive Director and sets the salary for the Executive Director, pursuant to HRS § 163D-3.

65. The ADC Executive Director is a high-ranking government official.

66. The ADC Executive Director has a high level of fiscal discretion.

67. The ADC Executive Director runs and manages ADC, statewide, subject to ADC Board oversight.

68. The ADC Board's annual performance evaluation of the ADC Executive Director is an important government process and a critical responsibility of the board.

69. The public has a legitimate interest in observing and participating in the ADC Board's annual performance evaluation of the ADC Executive Director.

70. The public has a legitimate interest in understanding how the ADC Board carries out its statutory duties of appointment and oversight, including how it evaluates the annual performance of the ADC Executive Director.

71. Selection of the ADC Executive Director is an important government process and a critical responsibility of the ADC Board.

72. The public has a legitimate interest in observing and participating in the ADC Board's selection of the ADC Executive Director.

73. The public has a legitimate interest in understanding how the ADC Board carries out its statutory duties of appointment and oversight, including how it interviews, evaluates, and selects candidates for the ADC Executive Director.

**Annual Performance Evaluation of Former Executive Director James Nakatani
for Fiscal Years 2020-2021 and 2021-2022**

74. The Office of the State Auditor published its audit of ADC, Report No. 21-01, in January 2021.

75. That audit concluded that ADC, after a decade under the stewardship of Executive Director James Nakatani, had made no real progress toward its central purpose: “ADC has done little – if anything – to facilitate the development of agricultural enterprises to replace the economic loss created by the demise of the sugar and pineapple industries.” Report No. 21-01 (summary).

76. The State Auditor noted further that ADC’s recordkeeping and filing system were in “disarray” and key documents – “such as board approvals, license agreements, and proof of insurance” – were often missing.

77. After the release of the ADC audit, the Hawai`i House of Representatives convened a committee to investigate the findings of the ADC audit, commencing public hearings in September 2021.

78. Months later, at the ADC Board’s January 26, 2022 meeting, in regular session, the ADC Board Chair assigned three members to the ADC Board’s “Standing Administration Committee” to conduct the annual performance evaluation of the Executive Director.

79. In assigning the three members, the Chair invoked Article IV, Section I of the ADC bylaws, which purportedly authorizes “standing committees” to conduct board business outside of the public view and Sunshine Law requirements.

80. At the ADC Board's June 15 meeting, in regular session, the Standing Administration Committee reported that two of its members interviewed Executive Director Nakatani and that the committee planned to conduct more interviews and report its findings to the ADC Board.

81. The published agenda for the ADC Board's August 17 meeting provided that the ADC Board would meet in executive session pursuant to HRS §§ 92-5(a)(2) and (4) to discuss the annual performance evaluation of the Executive Director.

82. At the August 17 meeting, the Standing Administration Committee orally presented its findings to the ADC Board entirely in closed session.

83. Upon exiting executive session, the ADC Board announced that "the vote will be taken up at the next meeting."

84. The published agenda for the ADC Board's September 21 meeting provided that the ADC Board would meet in executive session pursuant to HRS § 92-5(a)(2) to discuss the annual performance evaluation of the Executive Director.

85. At the September 21 meeting, the ADC Board met entirely in executive session to evaluate the Executive Director.

86. Upon reconvening in open session, the ADC Board announced that it "deferred the acceptance of the annual performance evaluation of the ADC Executive Director James Nakatani until the next meeting."

87. The published agenda for the ADC Board's November 2 meeting provided that the ADC Board would meet in executive session pursuant to HRS § 92-5(a)(2) to discuss the annual performance evaluation of the Executive Director.

88. On November 2, the ADC Board met entirely in closed session to evaluate the Executive Director.

89. Upon reconvening in open session, the ADC Board approved the “updated October 12, 2022 annual performance evaluation” of Executive Director Nakatani without any public discussion or deliberation.

90. The ADC Board did not publicly disclose anything about the approved report or its evaluation deliberations.

91. At the ADC Board’s January 25, 2023 meeting, in regular session, the ADC Board established an “ad hoc” committee to evaluate Executive Director Nakatani’s performance for fiscal year 2021-2022, and the ADC Board Chair appointed three members to the “ad hoc” committee.

92. The published agenda for the ADC Board’s March 16 meeting provided that the ADC Board would meet in executive session pursuant to HRS § 92-5(a)(2) for the “Presentation of the Draft Annual Performance Review” of Executive Director Nakatani.

93. At the March 16 meeting, the ADC Board met entirely in executive session to discuss the ad hoc committee’s draft annual performance review.

94. The published agenda for the ADC Board’s April 20 meeting provided that the ADC Board would meet in executive session pursuant to HRS § 92-5(a)(2) to deliberate on approval of the draft annual performance review of Executive Director Nakatani.

95. At the April 20 meeting, the ADC Board met entirely in executive session to deliberate on approval of the draft performance review of Executive Director Nakatani.

96. Upon reconvening in open session, the ADC Board Chair “called for a motion to adopt the Evaluation Committees’ report and recommendation to retain the Executive Director at his present salary.”

97. The ADC Board approved the report and recommendation without any public discussion or deliberation.

98. The ADC Board did not disclose the approved report or the ADC Board’s evaluation deliberations.

99. Executive Director Nakatani passed away unexpectedly on April 23.

Selection of New Executive Director

100. The ADC Board held six meetings to select a new Executive Director: May 30, July 20, August 8, August 17, September 21, and October 3, 2023.

101. Throughout the selection process, the ADC Board kept the identities of candidates secret, interviewed them in secret, and deliberated on and selected a candidate for ADC Executive Director in secret.

102. On May 30, the ADC Board formed a permitted interaction group to develop an application process, solicit and interview candidates, rank applications, and narrow the selection to two or three candidates (Hiring PIG).

103. The published agenda for the June 15 meeting provided that the ADC Board would receive an “[u]pdate on the progress of the Executive Director Search Committee.”

104. The board packet for the June 15 meeting included a report titled “Update on the progress of the Executive Director Search Committee” (Interim Report), which stated that the Hiring PIG had developed an application process, position description, and process for soliciting applications.

105. The Interim Report also provided that the Hiring PIG was in the process of drafting criteria to rank applications and would meet around June 27 to “review the applications, schedule and hold interviews, narrow the candidate selection to three individuals, then complete and present its report with findings and recommendations to the full Board.”

106. At the June 15 meeting, the Hiring PIG summarized the Interim Report for the ADC Board in open session.

107. The published agenda for the July 20 meeting provided that the Hiring PIG would present their findings and recommendations to the ADC Board and that the ADC Board might enter executive session pursuant to HRS § 92-5(a)(2).

108. The board packet for the July 20 meeting included a report titled “Summary of Activities Conducted by the ADC Executive Director Selection Committee” (Summary Report).

109. The Summary Report provided that the Hiring PIG met on June 28, deliberated on and selected the criteria it would consider to evaluate candidates,

reviewed fourteen applications, narrowed the field to seven, and interviewed those candidates on July 6.

110. The Summary Report further provided the Hiring PIG's anonymous ranking of candidates – anonymizing both the identities of candidates and members of the Hiring PIG – and its selection of three unidentified candidates for further consideration by the ADC Board.

111. The Summary Report indicated that the Hiring PIG would complete its report and provide its recommendations to the ADC Board “during executive session” at the ADC Board's July 20 meeting.

112. At the July 20 meeting, the Hiring PIG referenced the Summary Report as containing the entirety of its “public findings.”

113. The ADC Board then announced it would enter into executive session to receive the Hiring PIG's full findings and recommendations pursuant to HRS § 92-5(a)(2).

114. On information and belief, the ADC Board discussed and deliberated on the Hiring PIG's findings and recommendations in executive session on July 20.

115. Upon exiting executive session, the ADC Board effectively adopted the Hiring PIG's recommendation – to interview the top two candidates selected by the Hiring PIG – but announced it would hold the vote on it at the next meeting.

116. The ADC Board then invited comments from the public on the Hiring PIG's recommendations at the next meeting – still without identifying the candidates under consideration.

117. The published agenda for the August 8 meeting provided that the ADC Board would conduct Executive Director candidate interviews, discuss Executive Director salary, and select an Executive Director in closed session pursuant to HRS § 92-5(a)(2).

118. The August 8 agenda also provided that the ADC Board would deliberate and engage in decision-making “on the recommendation(s) of the [Hiring PIG] submitted to the Board at the July 20, 2023 regular meeting.”

119. At the August 8 meeting, the Chair of the ADC Board invited public testimony on the Hiring PIG’s recommendations, despite the fact that the identities of the candidates remained secret.

120. The ADC Board then voted to accept the recommendations of the Hiring PIG without public deliberation or comment.

121. After approving the Hiring PIG’s mostly secret recommendations, the ADC Board entered executive session and interviewed candidates, discussed salary, and deliberated on the selection for the ADC Executive Director for almost three hours.

122. Upon reconvening in open session, the Chair of the ADC Board announced that the ADC Board had deliberated on and selected a specific candidate.

123. The ADC Board did not announce the identity of the selected candidate on August 8 when it reconvened in public session.

124. The ADC Board never publicly deliberated or explained the reasons for its selection of the ADC Executive Director.

125. The ADC Board publicly announced its selection on August 17.

126. Days later, on August 21, an anonymous member of the public asked the State of Hawai`i Office of Information Practices (OIP) whether the ADC Board complied with the Sunshine Law in its hiring of the ADC Executive Director.

127. On November 3, OIP issued Opinion Letter No. F24-03 in response to the August 21 anonymous request, holding among other things that the ADC Board's executive sessions during the selection of the ADC Executive Director did not violate the Sunshine Law.

128. On November 20, Public First asked OIP to reconsider Opinion Letter No. F24-03 because it contradicted clear guidance from the Hawai`i Supreme Court.

129. On November 29, OIP declined to reconsider its decision and advised Public First that it could pursue judicial relief.

COUNT I
THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY IMPROPERLY
AMENDING THE JUNE 16 AGENDA

130. The paragraphs above are incorporated and realleged here.

131. The Sunshine Law requires boards to publish an agenda six days ahead of a meeting to provide reasonable notice of what will be discussed at the meeting and permit the public the opportunity to provide testimony. HRS § 92-7.

132. "No board shall change the agenda, less than six calendar days prior to the meeting, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons." HRS § 92-7(d).

133. The selection process to appoint and hire the State Public Defender is an item of reasonably major importance for which action thereon would affect a significant number of persons.

134. The Council violated the Sunshine Law by amending the June 16 agenda to add discussion regarding the selection process for the next State Public Defender.

135. Public First is entitled to an order declaring that the Council violated the Sunshine Law by improperly amending the June 16 agenda.

136. Public First is entitled to an order compelling disclosure of the June 16 executive session minutes and recordings.

137. Public First is entitled to an order voiding the Council's selection of Defendant Ikenaga for State Public Defender, pursuant to HRS § 92-11.

COUNT II
THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY MEETING IN EXECUTIVE SESSION ON JUNE 16 TO DISCUSS THE SELECTION PROCESS FOR THE STATE PUBLIC DEFENDER

138. The paragraphs above are incorporated and realleged here.

139. The Council did not publicly announce the reason for entering executive session on June 16 as required by HRS § 92-4.

140. The entirety of the Council's June 16 executive session to discuss the process for hiring the State Public Defender was not directly related to a purpose stated in HRS § 92-5.

141. The Council's closed-door discussions concerning the general process for hiring the State Public Defender on June 16 exceeded the scope of any permissible exception.

142. The Council violated the Sunshine Law by meeting in executive session on June 16 to discuss and decide the general process for hiring the State Public Defender.

143. Public First is entitled to an order declaring that the Council violated the Sunshine Law by meeting in executive session on June 16 to discuss and decide the general process for hiring the State Public Defender.

144. Public First is entitled to an order voiding the Council's selection of Defendant Ikenaga for State Public Defender, pursuant to HRS § 92-11.

COUNT III
THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY MEETING IN EXECUTIVE SESSION ON AUGUST 4 TO DISCUSS THE SELECTION PROCESS FOR THE STATE PUBLIC DEFENDER

145. The paragraphs above are incorporated and realleged here.

146. The published agenda for the August 4 meeting provided, in relevant part, that the Council would meet in executive session "pursuant to section 92-5(a)(4), Hawai'i Revised Statutes, *to consult with the Council's attorney* on questions and issues pertaining to the. . . . Selection process for the Public Defender." (Emphasis added).

147. The Council did not consult with its attorney during the August 4 executive session.

148. The entirety of the Council's August 4 executive session to discuss the general process for hiring the State Public Defender was not directly related to consultation with the Council's attorney.

149. The Council's closed-door discussions concerning the general process for hiring the State Public Defender on August 4 exceeded the scope of any permissible exception.

150. The Council violated the Sunshine Law by meeting in executive session on August 4 to discuss and decide the general process for hiring the State Public Defender.

151. Public First is entitled to an order declaring that the Council violated the Sunshine Law by improperly meeting in executive session on August 4 to discuss and decide the general process for hiring the State Public Defender.

152. Public First is entitled to an order voiding the Council's selection of Defendant Ikenaga for State Public Defender, pursuant to HRS § 92-11.

COUNT IV
THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY MEETING IN EXECUTIVE SESSION ON OCTOBER 4 TO INTERVIEW AND DISCUSS CANDIDATES FOR STATE PUBLIC DEFENDER

153. The paragraphs above are incorporated and realleged here.

154. The published agenda for the October 4 meeting provided, in relevant part, that the Council would meet in executive session "pursuant to section 92-5(a)(2), Hawai'i Revised Statutes, to interview candidates for the position of the State Public Defender."

155. HRS § 92-5(a)(2) permits a closed meeting "[t]o consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, *where consideration of matters affecting privacy will be involved.*" (Emphasis added.)

156. This exception to the Sunshine Law's open meetings requirements — known as the "personnel-privacy exception" — requires a case-by-case analysis of whether the discussion directly involves "matters affecting privacy."

157. The Council exceeded the bounds of a permissible executive session by discussing and deliberating toward a decision in executive session on matters not “directly related” to consideration of matters affecting privacy.

158. Information concerning the qualifications and fitness of candidates for the State Public Defender is not “highly personal and intimate.”

159. There is a legitimate public interest in the disclosure of information concerning the qualifications and fitness of candidates for State Public Defender and the Council’s deliberations regarding the same.

160. The Council’s closed-door candidate interviews and post-interview discussions on October 4 exceeded the scope of any permissible exception.

161. The Council did not have a valid legal basis for conducting the entirety of its October 4 candidate interviews and post-interview discussion in executive session.

162. The Council violated the Sunshine Law by conducting the entirety of its October 4 candidate interviews and post-interview discussion in executive session.

163. Public First is entitled to an order declaring that the Council violated the Sunshine Law by conducting the entirety of its October 4 candidate interviews and post-interview discussion in executive session.

164. Public First is entitled to an order voiding the Council’s selection of Defendant Ikenaga for State Public Defender, pursuant to HRS § 92-11.

COUNT V
THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY MEETING IN
EXECUTIVE SESSION ON NOVEMBER 2 TO DELIBERATE ON AND SELECT
THE STATE PUBLIC DEFENDER

165. The paragraphs above are incorporated and realleged here.

166. The published agenda for the November 2 meeting provided that the Council would meet in executive session pursuant to the personnel-privacy exception “regarding discussion and possible selection of the Public Defender.”

167. The Council’s closed-door deliberations regarding candidates’ qualifications and fitness, and its ultimate selection, exceeded the bounds of a permissible executive session by discussing and deliberating toward a decision in executive session on matters not “directly related” to consideration of matters affecting privacy.

168. Information concerning the qualifications and fitness of candidates for the State Public Defender is not “highly personal and intimate.”

169. There is a legitimate public interest in the disclosure of information concerning the qualifications and fitness of candidates for State Public Defender and the Council’s deliberations regarding the same.

170. The Council’s closed-door candidate deliberations on November 2 exceeded the scope of any permissible exception.

171. The Council did not have a valid legal basis for conducting the entirety of its candidate deliberations on November 2 in executive session.

172. The Council violated the Sunshine Law by conducting the entirety of its candidate deliberations on November 2 in executive session.

173. Public First is entitled to an order declaring that the Council violated the Sunshine Law by conducting the entirety of its candidate deliberations on November 2 in executive session.

174. Public First is entitled to an order voiding the Council's selection of Defendant Ikenaga for State Public Defender, pursuant to HRS § 92-11.

COUNT VI
THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY FAILING TO
RECORD LEGALLY SUFFICIENT REGULAR SESSION MINUTES

175. The paragraphs above are incorporated and realleged here.

176. HRS § 92-9(a) requires that boards "keep written or recorded minutes of all meetings."

177. On information and belief, the Council failed to keep written or recorded regular session minutes of the October 4 meeting.

178. HRS § 92-9(a) also requires that minutes "give a true reflection of the matters discussed at the meeting and the views of the participants" and include the "substance of all matters proposed, discussed, or decided" among other particulars.

179. The Council failed to record minutes that provided a true reflection of the matters discussed and the views of the participants for its June 16, August 4, and November 2 meetings.

180. The Council violated the Sunshine Law by failing to keep any written or recorded regular session minutes of the October 4 meeting.

181. The Council violated the Sunshine Law by failing to keep adequate minutes for its June 16, August 4, and November 2 meetings.

182. Public First is entitled to an order declaring that the Council violated the Sunshine Law by failing to keep legally sufficient minutes of its meetings.

183. Public First is entitled to an order compelling the Council for a period of four years to maintain audio recordings of all regular session meetings and publish the recordings online within forty days of the meeting.

**COUNT VII
THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY FAILING TO
RECORD LEGALLY SUFFICIENT EXECUTIVE SESSION MINUTES FOR THE
OCTOBER 4 AND NOVEMBER 2 MEETINGS**

184. The paragraphs above are incorporated and realleged here.

185. The October 4 executive session minutes do not provide a true reflection of the matters discussed at the meeting and the views of the participants.

186. The October 4 executive session minutes do not provide the substance of all matters proposed, discussed, or decided.

187. The Council violated the Sunshine Law by failing to record legally sufficient executive session minutes of the October 4 meeting.

188. The November 2 executive session minutes do not provide a true reflection of the matters discussed at the meeting and the views of the participants.

189. The November 2 executive session minutes do not provide the substance of all matters proposed, discussed, or decided.

190. The Council violated the Sunshine Law by failing to record legally sufficient executive session minutes of the November 2 meeting.

191. Public First is entitled to an order declaring that the Council violated the Sunshine Law by failing to record legally sufficient executive session minutes of the October 4 and November 2 meetings.

192. Public First is entitled to an order compelling the Council to maintain audio recordings of all executive session meetings for a period of four years.

COUNT VIII
THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY LIMITING PUBLIC TESTIMONY TO THE BEGINNING OF THE COUNCIL'S AGENDAS

193. The paragraphs above are incorporated and realleged here.

194. HRS § 92-3 provides: "boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item; provided that the oral testimonies of interested persons shall not be limited to the beginning of a board's agenda or meeting."

195. The Council limited public testimony to the beginning of the Council's agenda on June 16, August 4, October 4, and November 2, 2023.

196. The Council also failed to take public testimony on the selection process for the State Public Defender at the June 16 meeting.

197. The Council violated the Sunshine Law by failing to afford all interested persons an opportunity to present oral testimony on any agenda item and by limiting public testimony to the beginning of the Council's agenda on June 16, August 4, October 4, and November 2, 2023.

198. Public First is entitled to an order declaring that the Council violated the Sunshine Law by failing to take public testimony concerning its amended agenda on

June 16 and limiting public testimony to the beginning of the Council's meeting on June 16, August 4, October 4, and November 2, 2023.

199. Public First is entitled to an order voiding the Council's selection of Defendant Ikenaga for State Public Defender, pursuant to HRS § 92-11.

**COUNT IX
THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY FAILING TO
TIMELY PUBLISH MEETING MINUTES**

200. The paragraphs above are incorporated and realleged here.

201. HRS § 92-9(a) requires boards to publish its meeting minutes online "within forty days after the meeting."

202. The Council failed to timely post minutes for all its public meetings through October 24, 2023.

203. Public First notified the Council of the missing minutes on October 24.

204. As of October 24, the Council had no meetings minutes published publicly online.

205. The Council has a history of not timely posting its meeting minutes online.

206. Public First previously raised this same issue with the Council in October 2020, and, in November 2020, the Council promised: "Minutes will be published within 40 days of a meeting."

207. Had the Council abided by the statutory requirement and its prior promise, the public would have been more informed as to the Council's hiring process for the State Public Defender.

208. The Council violated the Sunshine Law by failing to timely post minutes for all its public meetings, including the meetings concerning the selection of the State Public Defender on June 16 and August 4.

209. Public First is entitled to an order declaring that the Council violated the Sunshine Law by failing to timely post minutes for all its public meetings.

COUNT X
THE ADC BOARD OF DIRECTORS VIOLATED THE SUNSHINE LAW BY USING
UNAUTHORIZED COMMITTEES TO EVALUATE THE EXECUTIVE DIRECTOR
OUTSIDE OF PUBLIC VIEW

210. The paragraphs above are incorporated and realleged here.

211. The Sunshine Law prohibits the discussion of board business among three or more members of a board outside of a duly held public meeting – unless the board follows the requirements of HRS § 92-2.5.

212. The ADC Board’s annual performance evaluation of the ADC Executive Director is board business.

213. Throughout 2021, three members of the ADC Board – the “Standing Administration Committee” – met outside of duly held public meetings to evaluate the ADC Executive Director’s performance for fiscal year 2020 to 2021, without following the requirements of HRS § 92-2.5.

214. That committee evaluated Executive Director Nakatani’s performance entirely in secret and without following the mandates of HRS § 92-2.5.

215. Throughout 2022, three members of the ADC Board – the “ad hoc” evaluation committee – met outside of duly held public meetings to evaluate the ADC

Executive Director's performance for fiscal year 2021 - 2022, without following the requirements of HRS § 92-2.5.

216. Public First is entitled to an order declaring that the ADC Board violated the Sunshine Law by using unauthorized committees of three members to evaluate the ADC Executive Director's annual performance.

COUNT XI
THE ADC BOARD OF DIRECTORS VIOLATED THE SUNSHINE LAW BY
EVALUATING THE ADC EXECUTIVE DIRECTOR ENTIRELY IN SECRET

217. The paragraphs above are incorporated and realleged here.

218. The published agendas for meetings held August 17, September 21, and November 2, 2022 and March 16 and April 20, 2023 identified the personnel-privacy exemption as the legal basis for holding an executive session to evaluate the ADC Executive Director's performance.

219. As noted, the personnel-privacy exception requires a case-by-case analysis of whether the personnel discussion directly involves "matters affecting privacy."

220. The ADC Board exceeded the bounds of a permissible executive session on August 17, September 21, and November 2, 2022 and March 16 and April 20, 2023 by discussing and deliberating toward a decision in executive session on matters not "directly related" to consideration of matters affecting privacy.

221. Information concerning the annual performance of the ADC Executive Director and ADC Board's evaluation of that performance is not "highly personal and intimate."

222. There is a legitimate public interest in understanding the annual performance of the ADC Executive Director and ADC Board's evaluation of that performance.

223. The ADC Board's closed-door deliberations concerning its annual evaluation of the ADC Executive Director's performance for fiscal years 2020 - 2021 and 2021 - 2022 exceeded the scope of any permissible exception.

224. The ADC Board did not have a valid legal basis for conducting the entirety of its performance review and evaluation of Executive Director Nakatani for fiscal years 2020 - 2021 and 2021 - 2022 in executive session.

225. The ADC Board violated the Sunshine Law by conducting the entirety of its performance review and evaluation of Executive Director Nakatani for fiscal years 2020 - 2021 and 2021 - 2022 in executive session.

226. Public First is entitled to an order declaring that the ADC Board violated the Sunshine Law by conducting the entirety of its performance review and evaluation of Executive Director Nakatani for fiscal years 2020 - 2021 and 2021 - 2022 in executive session.

227. Public First is entitled to an order compelling the ADC Board to disclose executive session minutes and recordings for the meetings held August 17, September 21, and November 2, 2022 and March 16 and April 20, 2023.

COUNT XII
THE ADC BOARD OF DIRECTORS VIOLATED THE SUNSHINE LAW BY
SELECTING ADC'S EXECUTIVE DIRECTOR ENTIRELY IN SECRET

228. The paragraphs above are incorporated and realleged here.

229. The published agenda for the July 20 meeting provided that the ADC Board would meet in executive session pursuant to the personnel-privacy exception for a presentation by the Hiring PIG regarding their findings and recommendations as to the ADC Executive Director position.

230. The published agenda for the August 8 meeting provided that the ADC Board would meet in executive session pursuant to the personnel-privacy exception for "Executive Director candidate interviews," "discussion of Executive Director Salary," and "Board selection of Executive Director."

231. The ADC Board exceeded the bounds of a permissible executive session on July 20 and August 8 by discussing and deliberating toward a decision in executive session on matters not "directly related" to consideration of matters affecting privacy.

232. Information concerning the identities, qualifications, and fitness of candidates for the ADC Executive Director is not "highly personal and intimate."

233. There is a legitimate public interest in the disclosure of information concerning the identities, qualifications, and fitness of candidates for the ADC Executive Director and the ADC Board's deliberations regarding the same.

234. Information concerning the salary of the ADC Executive Director is not "highly personal and intimate."

235. There is a legitimate public interest in the disclosure of information concerning the salary of the ADC Executive Director and the ADC Board's deliberations regarding the same.

236. The ADC Board's closed-door discussions of the Hiring PIG's recommendations, candidate interviews, evaluation of candidate qualifications and fitness, and candidate selection exceeded the scope of any permissible exception.

237. The ADC Board did not have a valid legal basis for conducting the entirety of its deliberations on the Hiring PIG's recommendations, candidate interviews, evaluation of candidate qualifications and fitness, discussion of Executive Director salary, and candidate selection in executive session on July 20 and August 8.

238. The ADC Board violated the Sunshine Law by conducting its executive sessions on July 20 and August 8.

239. Public First is entitled to an order declaring that the ADC Board violated the Sunshine Law by deliberating on the Hiring PIG's recommendations, interviewing candidates, evaluating their qualifications and fitness, and selecting the next ADC Executive Director entirely in executive session on July 20 and August 8.

240. Public First is entitled to an order compelling the ADC Board to disclose executive session minutes and recordings for the July 20 and August 8 meetings.

241. Public First is entitled to an order compelling the ADC Board to disclose the complete findings and recommendations of the Hiring PIG.

COUNT XIII
THE ADC BOARD OF DIRECTORS VIOLATED THE SUNSHINE LAW BY
IMPROPERLY USING A PERMITTED INTERACTION GROUP

242. The paragraphs above are incorporated and realleged here.

243. The ADC Board's hiring of the ADC Executive Director is board business.

244. As noted, the Sunshine Law prohibits the discussion of board business among three or more members of a board outside of a duly held public meeting— unless the board follows the requirements of HRS § 92-2.5.

245. To allow for substantive public participation, the Sunshine Law requires separate meetings for permitted interaction group reporting and decision-making on the same: “[d]eliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held *subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board.*” HRS § 92-2.5(b)(1)(C) (emphasis added).

246. Also, as soon as a permitted interaction group has presented a report, it is no longer authorized to continue acting as a permitted interaction group and is effectively dissolved.

247. At the ADC Board's June 15 meeting, the Hiring PIG presented a report on its actions.

248. At the ADC Board's July 20 meeting, the Hiring PIG presented its findings and recommendations to the ADC Board in executive session.

249. The ADC Board deliberated on the Hiring PIG's findings and recommendations on July 20 in executive session – the same meeting at which the findings and recommendations were presented to the ADC Board.

250. The ADC Board violated the Sunshine Law when the Hiring PIG presented multiple reports to the ADC Board without dissolving.

251. The ADC Board violated the Sunshine Law by deliberating on the Hiring PIG's findings and recommendations at the same meeting at which the findings and recommendations were presented to the ADC Board.

252. The ADC Board violated the Sunshine Law by engaging in decision-making on the Hiring PIG's findings and recommendations at the same meeting at which the findings and recommendations were presented to the ADC Board.

253. Public First is entitled to an order declaring that the ADC Board violated the Sunshine Law at the June 15 meeting by not dissolving the Hiring PIG after it presented a report to the ADC Board.

254. Public First is entitled to an order declaring that the ADC Board violated the Sunshine Law at the July 20 meeting by deliberating and engaging in decision-making on the Hiring PIG's findings and recommendations at the same meeting at which the findings and recommendations were presented to the ADC Board.

255. Public First is entitled to an order compelling the ADC Board to disclose the complete findings and recommendations of the Hiring PIG.

COUNT XIV
OIP OPINION LETTER NO. F24-03 IS PALPABLY ERRONEOUS

256. The paragraphs above are incorporated and realleged here.

257. At the August 8 meeting, the ADC Board relied on the personnel-privacy exemption, in blanket fashion, to justify its closed-door deliberations and decision-making concerning the hiring of a new ADC Executive Director.

258. The ADC Board did so in disregard of plain law. *E.g., Civil Beat Law*, 144 Hawai`i 466, 445 P.3d 47 (providing required case-specific analysis to properly invoke the personnel-privacy exemption).

259. OIP Opinion Letter No. F24-03 is palpably erroneous to the extent it held that the ADC Board properly conducted an executive session on August 8.

260. Public First is entitled to an order declaring that Opinion Letter No. F24-03 is palpably erroneous to the extent it held that the ADC Board properly conducted an executive session on August 8.

DEMAND FOR RELIEF

Based on the foregoing, Public First respectfully asks this Court to grant the following relief:

A. Enter an order declaring that the Council violated the Sunshine Law by:

(1) Meeting in executive session on June 16 to discuss and decide the general process for hiring the State Public Defender;

(2) Meeting in executive session on August 4 to discuss and decide the general process for hiring the State Public Defender;

(3) Conducting the entirety of its October 4 candidate interviews and post-interview discussion in executive session;

(4) Conducting the entirety of its candidate selection deliberations on November 2 in executive session;

(5) Failing to keep legally sufficient minutes of its meetings;

(6) Failing to record legally sufficient executive session minutes of the October 4 and November 2 meetings;

(7) Failing to take public testimony concerning its amended agenda on June 16 and limiting public testimony to the beginning of the Council's meeting on June 16, August 4, October 4, and November 2, 2023; and

(8) Failing to timely post minutes for all of its public meetings;

B. Enter an order compelling the Council to disclose the June 16 executive session minutes and recordings.

C. Enter an order compelling the Council, for a period of four years, to maintain audio recordings of all regular session meetings and publish the recordings online within forty days of the meeting;

D. Enter an order compelling the Council, for a period of four years, to maintain audio recordings of all executive session meetings;

E. Enter an order voiding the Council's selection of Defendant Ikenaga for State Public Defender, pursuant to HRS § 92-11;

F. Enter an order declaring that the ADC Board violated the Sunshine Law by:

(1) Forming unauthorized committees of three members to evaluate the ADC Executive Director's annual performance;

(2) Evaluating the Executive Director's performance for fiscal years 2020-2021 and 2021-2022 entirely in executive session;

(3) Deliberating on the Hiring PIG's recommendations, interviewing candidates, evaluating candidate qualifications and fitness, discussing the ADC Executive Director's salary, and selecting the next ADC Executive Director entirely in executive session on July 20 and August 8;

(4) Failing to dissolve the Hiring PIG after it presented a report to the ADC Board; and

(5) Deliberating and engaging in decision-making on the Hiring PIG's findings and recommendations at the same meeting at which the findings and recommendations were presented to the ADC Board;

G. Enter an order compelling the ADC Board to disclose executive session minutes and recordings for the meetings held August 17, September 21, and November 2, 2022 and March 16 and April 20, 2023;

H. Enter an order compelling the ADC Board to disclose executive session minutes and recordings for the June 15 meeting;

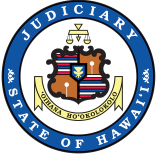

I. Enter an order compelling the ADC Board to disclose executive session minutes and recordings for the July 20 and August 8 meetings;

J. Enter an order compelling the ADC Board to disclose the complete findings and recommendations of the Hiring PIG;

- K. Enter an order declaring that OIP Opinion Letter No. F24-03 is palpably erroneous to the extent it held that the ADC Board properly conducted an executive session on August 8;
- L. Enter an order requiring the Council and ADC Board to participate in annual Sunshine Law training;
- M. Enter judgment in favor of Plaintiff and against Defendants on all counts respectively brought against them;
- N. Award Plaintiff reasonable attorney's fees and all other expenses reasonably incurred in the litigation, pursuant to HRS § 92-12(c); and
- O. Grant such other and further relief as it deems reasonable and just.

DATED: Honolulu, Hawai'i, January 10, 2024

/s/ Benjamin M. Creps
ROBERT BRIAN BLACK
BENJAMIN M. CREPS
GILLIAN SCHEFER KIM
Attorneys for Plaintiff

STATE OF HAWAI'I CIRCUIT COURT OF THE FIRST CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER
PLAINTIFF PUBLIC FIRST LAW CENTER	VS.	DEFENDANT(S) DEFENDER COUNCIL; JON N. IKENAGA; and AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS
PLAINTIFF'S NAME & ADDRESS, TEL. NO. Robert Brian Black Benjamin M. Creps Gillian Schefer Kim Public First Law Center 700 Bishop Street, Suite 1701 Honolulu, HI 96813 (808) 531-4000		
<p>TO THE ABOVE-NAMED DEFENDANT(S)</p> <p>You are hereby summoned and required to file with the court and serve upon</p> <p>Robert Brian Black; Benjamin M. Creps; Gillian Schefer Kim</p> <hr/> <p>plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.</p> <p>THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.</p> <p>A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.</p>		
The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: http://www.courts.state.hi.us	Effective Date of 28-Oct-2019 Signed by: /s/ Patsy Nakamoto Clerk, 1st Circuit, State of Hawai'i 	
 In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office on OAHU- Phone No. 808-539-4400, TTY 808-539-4853, FAX 539-4402, at least ten (10) working days prior to your hearing or appointment date.		